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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

JUN 27 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Local Competition)
Provisions in the Telecommunications Act)
of 1996)

CC Docket No. 96-98

Interconnection between Local Exchange)
Carriers and Commercial Mobile Radio)
Service Providers)

CC Docket No. 95-185

Requests for Clarification of the Commission's)
Rules Regarding Interconnection Between)
LECs and Paging Carriers)

CPD 97-24

To: The Commission

REPLY COMMENTS OF PAGEMART WIRELESS, INC.

PageMart Wireless, Inc. ("PageMart"),^{1/} by its attorneys, hereby
submits its replies to the comments filed in the above-referenced proceedings pursuant
to the Public Notice released May 22, 1997 (DA 97-107).

On June 13, 1997, interested parties filed comments on three letters
placed on public notice by the Common Carrier Bureau; the letters discussed the
Commission's regulations and policies regarding interconnection between local

^{1/} PageMart is an innovative paging and narrowband PCS company with
Commercial Mobile Radio Service ("CMRS") licenses for paging
services throughout the United States. It provides low-cost, nationwide
services and, in connection with the provision of these services,
contracts with several local exchange carriers ("LECs") for the
provision of interconnection.

exchange carriers ("LECs") and paging carriers.^{2/} These letters prompted commentary from a number of parties with an interest in the Commission's policies regarding LEC-paging interconnection. Comments generally focused on Section 51.703(b) of the Commission's rules,^{3/} implementing Section 251 of the Communications Act.^{4/}

Virtually every paging carrier that submitted comments in the proceeding, including PageMart, took the position that LECs are prohibited by the Commission's Rules from assessing charges on paging carriers for the termination of LEC-originated traffic. The LECs raised a host of inaccurate and unpersuasive arguments, to which PageMart here responds. The Commission should decline to clarify Part 51 of the Commission's rules in the manner requested by SWBT and should move decisively to prevent further opportunistic behavior by LECs.

I. Comments of the LECs Failed to Provide a Persuasive Rationale for Avoiding the Explicit Language of Section 51.703(b).

In their comments in this proceeding, the LECs made several arguments designed to dissuade the Commission from adhering to the plain language of its own rules.^{5/} In its comments, PageMart explained why arguments made in the

^{2/} Two letters were from Southwestern Bell Telephone ("SWBT") (the "SWBT Letter"), and one letter was from AirTouch Communications, Inc., AirTouch Paging, AT&T Wireless Services, Inc., and PageNet, Inc.

^{3/} 47 C.F.R. § 51.703(b).

^{4/} 47 U.S.C. § 251.

^{5/} Interestingly, US West virtually concedes that the LEC argument is

SWBT Letter are meritless and should be disregarded.^{6/} Below, PageMart addresses additional issues raised by the LECs in their comments.

First, the Commission has already established that paging carriers are telecommunications carriers;^{7/} the LECs cannot -- either straightforwardly or by implication -- argue otherwise in this proceeding.^{8/} As demonstrated by (i) the Commission's historic treatment of paging carriers, (ii) the comments of other paging carriers in this proceeding,^{9/} and (iii) the recent California Public Utilities

^{5/}(...continued)

inconsistent with the plain language of the Commission's rules; US West argues for a new rulemaking proceeding to consider the Commission's rules regarding LEC-paging interconnection. Comments of US West at 8-13. Sprint makes a similar concession, arguing for the Commission to modify its rules by adding specific limitations to the general prohibition on LEC charges for termination of LEC-originated traffic. Comments of Sprint at 4.

^{6/} For example, PageMart demonstrated why SWBT's argument that facilities-based charges are excluded from the language of Section 51.703(b) is incorrect. Comments of PageMart, Inc. at 6.

^{7/} Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 F.C.C. Rcd. 15499, 16043 (1996) (First Report and Order). See also, Federal-State Joint Board on Universal Service, Report and Order, released May 18, 1997, para. 780.

^{8/} See, e.g., Comments of US West at 10; Comments of GTE at 4-5; Comments of the Independent Alliance at 6-7, Comments of Anchorage Telephone Utility at 2-3; Comments of Bellsouth at 9-10; Comments of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell at 5-6.

^{9/} See, e.g., Comments of Allied Personal Communications Industry Association of California at 5; Comments of Paging Network, Inc. at 5; Comments of Pronet, Inc. at 5-6.

Commission decision in Cook Telecom,^{10/} the specific functions provided by paging carriers indicate that their role goes significantly beyond the scope of end-users of LEC telecommunications services. To argue that paging carriers are somehow akin to retail subscribers of LECs' services ignores the functions performed by paging carriers in terminating, and in some cases transporting, the traffic originated by LEC subscribers. As telecommunications carriers, paging companies cannot be charged for termination of LEC-originated traffic.

The above erroneous argument by the LECs leads them to a corollary, and equally fallacious, argument: that a LEC's costs of providing transport functions for paging traffic should not go uncompensated;^{11/} LECs charge their subscribers for this service in the same way they do for any other service. When a call is initiated and terminated within a LEC's network, the LEC may recoup the costs of its origination and termination functions from end-users at both ends of the call. In such an instance, the LEC has incurred the costs of initiating, transporting, and terminating a call, and it may appropriately charge for these services. When a call originates with one LEC but is terminated by a different LEC, the original LEC charges its subscriber only for the costs incurred in originating the call. Thus, when a LEC charges its subscriber for the costs incurred in originating a call to a paging carrier, it is assessing a charge equivalent to the charges it assesses on other parties making

^{10/} Cook Telecom, Inc., Application 97-02-003 (interim opinion) (California Public Utilities Commission, May 21, 1997).

^{11/} See Comments of GTE at 7-8; Comments of Ameritech at 8.

inter-LATA calls. Presumably, this charge covers the cost of the functions that the LEC has provided in either instance.

II. The Commission Should Affirm That It Has Ultimate Jurisdiction over the Enforcement of Section 51.703(b), and Avoid a Prolonged Battle at Each of the State Public Utilities Commissions.

The Commission should take the opportunity provided by this proceeding to assert its jurisdiction over all LEC-CMRS interconnection disputes, including any disputes arising out of the interpretation of Part 51 of the Commission's Rules. During this ongoing dispute, many LECs have taken advantage of their position, and their market power as incumbent facilities-based providers, and attempted to coerce paging carriers into paying these unlawful charges by threatening to terminate their service or by withholding orders for new service.^{12/} Paging carriers who do not succumb to these threats and proffer the requested sums to the LECs face costly and time-consuming interconnection/arbitration proceedings before state public utilities commissions ("PUCs").

Those LECs that have offered to commence interconnection negotiations are unlikely to yield their position on the issue of termination compensation without a clear directive from the Commission. Thus, paging carriers have little incentive to enter into such negotiations at the present time.^{13/} Paging

^{12/} See Comments of Arch Communications Group, Inc. (Attachment "A").

^{13/} As noted by Contact New Mexico, L.P. in its comments in this proceeding, the LECs' position effectively denies that paging companies have co-carrier status, making it difficult for paging companies to commence negotiations. Comments of Contact New Mexico, L.P.

carriers that are forced to the negotiating table by the threat of termination will have little recourse but to expend resources in arbitration/mediation proceedings before every state PUC in the areas in which they provide service. Because of the wide-area, multi-state nature of paging services, these individual disputes would add up to an onerous burden.

The Commission's rules make clear that final jurisdiction for LEC-CMRS interconnection issues rests with the Commission itself.^{14/} By reminding the LECs that disputes about the "mutual compensation" provisions of the Commission's rules will be handled expeditiously at the Commission level, the Commission will send a clear signal to all parties involved and avoid instigating an onslaught of misplaced proceedings at 50 different PUCs.

III. The Commission Should Move Quickly to Affirm That It Intends to Enforce Section 51.703(b).

As long as the LECs believe that there is ambiguity with respect to the enforcement of 47 C.F.R. § 51.703(b), they will continue to use their monopoly positions to attempt to assess on CMRS providers illegal charges for termination of LEC-originated traffic, garnering a windfall from their noncompliance to the extent that CMRS carriers meet the LECs' unlawful demands. If paging companies choose not to shoulder the burden of what is, essentially, a forced loan to the LECs, then

^{13/}(...continued)
at 2-3.

^{14/} See, e.g., 47 C.F.R. § 20.11, which provides that complaints regarding LEC violations of their obligation to provide interconnection "within a reasonable time after the request" will be brought under 47 U.S.C. § 208.

they face the threat of disconnection from the LECs. Few paging companies are in a position to support either of these alternatives -- a forced loan to the LECs, or disconnection -- for any length of time.

LECs should be told to cease immediately their threats to cut off service to (and refusal to provision new service for) those paging carriers that insist on LEC compliance with the law. In addition, the Commission should clarify that LECs have an obligation to refund to paging carriers all monies received by LECs that were paid in error, or under protest, subsequent to the promulgation of Section 51.703(b). Only swift, decisive action by the Commission will reverse the damage that has been done to the paging industry and prevent further damage to the industry.

IV. Conclusion.

PageMart respectfully requests that the Commission reaffirm that Section 51.703(b) means exactly what it says: that LECs may not charge CMRS providers for the termination of LEC-originated traffic.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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